



1140 S. Coast Hwy 101
Encinitas, CA 92024
Tel 760-942-8505
Fax 760-942-8515
www.coastlawgroup.com

January 27, 2015

Veridiam, Inc
C/O Registered Agent
818 West Seventh St 2nd FL
Los Angeles, CA 90017

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**Re: Notice of Violation and Intent to File Clean Water Act Citizens' Suit
[33 U.S.C. § 1365] 60-Day Notice**

Dear Mr. Hollander,

Please accept this letter on behalf of Coastal Environmental Rights Foundation ("CERF" or "Citizen Group") regarding violations of the Federal Water Pollution Control Act (Clean Water Act) occurring at the Veridiam Oceanside Facility located at 4665 North Avenue, Oceanside, CA 92056. This letter constitutes the CERF's notice of intent to sue for violations of the Clean Water Act and National Pollution Discharge Elimination System (NPDES) Permit No. CAS000001 (General Industrial Permit), as more fully set forth below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator and various agency officials. (33 U.S.C. § 1365(b)(1)(A)). In compliance with section 1365, this letter provides notice of the Veridiam Facility's violations and of CERF's intent to sue.

I. BACKGROUND

A. The Veridiam Oceanside Facility

Veridiam, Inc owns and operates a facility located at 4665 North Avenue Oceanside, CA 92056 ("Veridiam Oceanside Facility" or "Facility"). Veridiam conducts metal tubing, electrical discharge machining, electro chemical sharpening, turning, laser cutting, alloy fabrication, and other metal fabrication services. The owners and operators of the aforementioned facility operating at 4665 North Avenue are collectively referred to herein as the "Veridiam Facility Owners and/or Operators."

B. Storm Water Pollution From Industrial Facilities

Storm water pollution results from materials and chemicals washed into the storm drains from streets, gutters, neighborhoods, industrial sites, parking lots and construction sites. This type

of pollution is significant because storm water is often untreated and flows directly to receiving waters, including lakes, rivers, or ultimately the ocean. Storm water runoff associated with industrial facilities in particular has the potential to negatively impact receiving waters and contributes to the impairment of downstream water bodies. Industrial areas are known to result in excessive wet-weather storm water discharges, as well as contaminated dry weather entries into the storm drain system.¹

Pollutants associated with Sector AA (Fabricated Metal Products) include total suspended solids, oil and grease, spent solvents, metals, paints, heavy metals, nitrates, gas and diesel fuel and fuel additives, and other pollutants

C. Citizen Group: Coastal Environmental Rights Foundation

CERF is a California nonprofit public benefit corporation founded by surfers dedicated to the protection, preservation and enhancement of the environment, wildlife, natural resources, local marine waters and other coastal natural resources. CERF's interests are and will be adversely affected by the Veridiam Facility Owners and/or Operators' actions. CERF's mailing address is 1140 S. Coast Highway 101, Encinitas, CA 92024. Its telephone number is (760) 942-8505.

Members of CERF use and enjoy the waters into which pollutants from the Veridiam Facility's ongoing illegal activities are discharged, including San Luis Rey River and the Pacific Ocean. The public and members of CERF use these receiving waters to fish, sail, boat, kayak, surf, stand-up paddle, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Veridiam Oceanside Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by the Veridiam Facility Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Enroll and Unpermitted Discharge

The Clean Water Act prohibits the "discharge of any pollutant," unless otherwise allowed by permit. 33 U.S.C. § 1311(a). A NPDES permit must be issued before any pollutant is discharged into Waters of the United States from a point source. 33 U.S.C. § 1342(1). "Any discharge of pollutants not allowed by an NPDES permit is illegal." (*San Francisco BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153 (9th Cir. 2002)). Under the Act, an NPDES permit is required when a discharger has (1) discharged (2) a pollutant (3) to waters of the United States (4) from a point source. (33 U.S.C. §§ 1311(a), 1342(a); see also *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993)).

Coverage under the General Industrial Permit for the Veridiam Oceanside Facility (SIC 3499) is mandatory. In order to obtain coverage under the Permit, "each facility operator must submit a Notice of Intent (NOI)." (Permit, p. 1). In 2014 City of San Diego Storm Water

¹ *Illicit Discharge Detection and Elimination: Technical Appendices*, Appendix K, Specific Considerations for Industrial Sources of Inappropriate Pollutant Entries to the Storm Drainage System (Adapted from Pitt, 2001)

staff/consultants inspected your facility and confirmed that coverage is required. Nonetheless, a NOI has not been filed for the Facility. The Facility has thus been operating in violation of the Clean Water Act since adoption of the Permit in 1997. See *Humboldt Baykeeper v. Union Pac. R.R. Co.*, 2006 U.S. Dist. LEXIS 88984 (N.D. Cal.2006) ["[a]ny person who discharges or proposes to discharge pollutants ... and who does not have an effective permit, except persons covered by general permits ..., must submit a complete application to the Director", citing 40 CFR § 122.21]).

Thus, the Veridiam Facility Owners and/or Operators failure to file a Notice of Intent and its continued unpermitted discharge of pollutants constitute separate and distinct violations of the Clean Water Act. (*Humboldt Baykeeper, supra*, at p. 88984 [claim for unpermitted discharge of pollutants and another for a failure to obtain a NPDES permit were two claims with "distinct legal viability."]).

III. REMEDIES

CERF's action will seek all remedies available under the Clean Water Act. (33 U.S.C. § 1365(a)(d)). "In suits under Section 505 of the Clean Water Act, citizens have access to the same remedies available to the EPA." (*Student Public Interest Research Group, Inc. v. Georgia-Pacific Corp.*, 615 F. Supp. 1419, 1425 (D.N.J. 1985), citing *Middlesex County Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 13-14 (1981)). Pursuant to Section 309(d) of the Clean Water Act and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$37,500 per day for all violations occurring during the period commencing five years prior to the date upon which this notice is served.

In addition to civil penalties, Citizen Groups will seek injunctive relief preventing further violations of the Clean Water Act pursuant to sections 505(a) and (d), declaratory relief, and such other relief as permitted by law. Section 505(d) of the Clean Water Act permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of their costs and fees pursuant to section 505(d).

CERF has retained legal counsel to represent them in this matter. All communications should be addressed to:

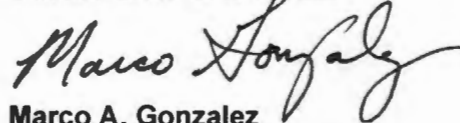
Marco A. Gonzalez
COAST LAW GROUP LLP
1140 S. Coast Highway 101
Encinitas, CA 92024
Tel: (760) 942-8505 x 102
Fax: (760) 942-8515
Email: marco@coastlawgroup.com

Upon expiration of the 60-day notice period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced prior, continuing, and anticipated violations. During the 60-day notice period, however, Citizen Groups will entertain settlement discussions. If

you wish to pursue such discussions in the absence of litigation, please contact Coast Law Group LLP immediately.

Sincerely,

COAST LAW GROUP LLP



Marco A. Gonzalez



Livia Borak
Attorneys for
Coastal Environmental Rights Foundation

CC:

Jared Blumenfeld, Region 9 Administrator Alexis Strauss, Deputy Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA, 94105	Dave Gibson, Executive Officer Catherine Hagan, Staff Counsel San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, CA 92108-2700
Gina McCarthy EPA Administrator Mail Code 4101M US EPA Ariel Rios Building (AR) 1200 Pennsylvania Avenue N.W. Washington, DC 20004	Thomas Howard Executive Director State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0110